

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the Gas Market Activities of Southern California Gas Company, San Diego Gas and Electric, Southwest Gas, Pacific Gas and Electric, and Southern California Edison and their impact on the Gas Price Spikes experienced at the California Border from March 2000 through May 2001.

Investigation 02-11-040
(Filed November 21, 2002)

**ASSIGNED COMMISSIONER'S RULING DENYING
MOTION FOR RECONSIDERATION**

Sempra Energy, presently a nonparty to this proceeding, has moved for reconsideration of the Law and Motion Administrative Law Judge's ruling of December 17, 2004, denying Sempra Energy's then-pending motion to quash a subpoena duces tecum issued at the request of Southern California Edison Company (Edison), a party to this investigation. The subpoena (referred to as the "October 19, 2004, subpoena") generally seeks documents provided by Sempra Energy to the California Attorney General and to plaintiffs in antitrust cases filed in the Superior Court in and for San Diego County.

The scope of discovery obtainable from Sempra Energy has been the subject of numerous hearings before the assigned Administrative Law Judge (ALJ) and Law and Motion ALJs since October 2003. This specific discovery dispute has been before the Law and Motion ALJ on two occasions. On October 4, 2004, the Law and Motion ALJ denied Edison's motion to compel responses to documents identified in an earlier subpoena duces tecum.

Following this ruling, Edison modified its supporting affidavit and secured the issuance of the October 19, 2004, subpoena. Sempra Energy's motion to quash the October 19th subpoena was denied by the Law and Motion ALJ on December 17th, leading to the pending motion for consideration. I deny the motion.

While styled as a "motion for reconsideration," the motion is not directed to the Law and Motion ALJ who issued the December 17th ruling. *Cf.* CAL. CIV. PROC. CODE § 1008(a) (2004) ("[A]ny party affected by the order may . . . based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order"). When motions for reconsideration have been granted, they have been in situations where the full Commission has modified the Assigned Commissioner's scoping memo or where the motion was directed to the Commissioner making the original ruling, D.00-06-083, *In re Rehearing of Resolution E-3654*, 2000 Cal. PUC LEXIS 306 (June 22, 2000).

If Sempra Energy's motion is considered to be an interlocutory appeal of the ALJ's discovery order, the Commission has consistently discouraged such interim appeals. *Cf. Southern Pacific Co. v. Oppenheimer*, 54 Cal. 2d 784, 785-86 (1960) (discovery orders not generally appealable). Usually, the Commission may act to affirm, modify, or reject an ALJ discovery or evidentiary ruling when a draft or proposed decision is before us on the merits. When "necessary to promote substantial justice," Rule 65 allows the presiding officer, during a proceeding, to refer evidentiary rulings to the Commission. Finally, under extraordinary circumstances, the Commission may grant a direct interlocutory request by a petitioner. *See, e.g., Application of Pacific Gas & Electric Co.*, D.86-12-101, 23 CPUC 2d 352, 353 (1986).

The California courts have articulated a general policy for denying the interlocutory review of discovery decisions that is also applicable here: “[I]n the great majority of cases the delay due to interim review of discovery orders is likely to result in greater harm to the judicial process by reason of protracted delay than in the enforcement of a possibly improper discovery order.” *Sav-On Drugs, Inc. v. Superior Court*, 15 Cal. 3^d 1, 5 (1975). Evidencing this concern, the present discovery dispute has delayed an already lengthy proceeding.

The court in *Sav-On Drugs* did recognize that interlocutory review of discovery decisions might be appropriate in extraordinary cases, such as those involving claims of privilege. Other decisions have indicated that interim relief may be warranted when necessary “to review questions that are of general importance to the trial courts and the profession, and when broad principles can be enunciated to guide the courts in future cases,” *Vinson v. Superior Court*, 43 Cal. 3^d 833, 838 (1987) (Mosk, J.), or when a party would be denied access to information necessary for a fair hearing. *Waicis v. Superior Court*, 226 Cal. App. 3^d 283, 286-87 (1st Dist. 1990). None of these considerations apply to the discovery dispute here. When Sempra Energy complies with the subpoena, it will have the opportunity to raise privilege claims. The discovery dispute does not raise novel issues that must be decided now. Rather than denying access to information, the Law and Motion ALJ’s ruling affords a party access to information that, on the basis of Edison’s affidavits, appears material to the proceeding.

IT IS RULED that:

1. Sempra Energy's motion to file a reply in support of its motion is granted.
2. Sempra Energy's motion for reconsideration of the Administrative Law Judge's December 17, 2004 ruling is denied.
3. Sempra Energy shall comply with the subpoena duces tecum within 30 days of the mailing of this ruling.

Dated March 29, 2005, at San Francisco, California.

/s/ GEOFFREY F. BROWN

Geoffrey F. Brown
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties who have provided an electronic mail address, this day served a true copy of the original attached Assigned Commissioner's Ruling Denying Motion for Reconsideration on all parties of record in this proceeding or their attorneys of record.

Dated March 29, 2005, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.